

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

SUSAN SOLOMON,)	
)	
Plaintiff,)	
)	CIVIL ACTION FILE
v.)	
)	NO.
KIM ANNETTE ROBERSON and)	
GARRETT A. BACKMAN,)	State Court of Fulton County
)	Case No. 20EV001393
Defendants.)	

**DEFENDANTS KIM ANNETTE ROBERSON AND
GARRETT A. BACKMAN NOTICE OF REMOVAL**

COME NOW Defendants KIM ANNETTE ROBERSON AND GARRETT A. BACKMAN (hereinafter “Defendants”) by and through their undersigned counsel, and pursuant to 28 U.S.C. §§ 1441 and 1446, hereby file this Notice of Removal of the above action to the United States District Court for the Northern District of Georgia, Atlanta Division. As grounds for this removal, Defendants state as follows:

History of Proceedings

1.

On or about March 2, 2020, Plaintiff Susan Solomon filed suit against Defendants in the State Court of Fulton County claiming damages arising out of a motor vehicle collision. GEICO General Insurance Company was served as Plaintiff's underinsured motorist carrier. This suit was styled *Susan Solomon v. Kim Annette Roberson and Garret A. Backman* and numbered Civil Action File No. 20EV001393 in that Court. A complete copy of the aforementioned Complaint and is attached as Exhibit "A" and is incorporated by reference.

2.

Plaintiff's Complaint alleges that on March 28, 2018, Defendant Kim Annette Roberson "negligently, recklessly, carelessly, and unlawfully failed to yield the right of way to Plaintiff while attempting a left turn, thereby causing a head-on collision that resulted in the total loss of Plaintiff's vehicle (Plaintiff's Complaint ¶ 7).

3.

Plaintiff contends that as a result of this motor vehicle collision, she sustained "substantial injuries and damages, including medical and other necessary expenses, [and] past and continuing lost wages." (Plaintiff's Complaint ¶ 15).

Plaintiff states she has incurred damages in excess of \$95,873.50. (Plaintiff's Complaint ¶ 16). Therefore, based on Plaintiff's own allegations, the amount in controversy exceeds the \$75,000.00 threshold.

4.

GEICO General Insurance Company filed its Answer and Cross-Claim on April 3, 2020. Defendant Kim Annette Roberson filed her Special Appearance Answer on August 14, 2020 and Defendant Garret A. Backman filed his Special Appearance Answer on August 14, 2020. Copies of all the aforementioned Answers are included with all the State Court Pleadings and discovery, attached as Exhibit "B."

Grounds for Removal of the State Action

5.

The above-described action is a civil action over which this Court has original jurisdiction under the provisions of Title 28 of the United States Code § 1332, in that it is a civil action in which the matter in controversy exceeds the sum of \$75,000.00 exclusive of interest and costs and is between citizens of different states, accordingly, it is one which may be removed to this Court by these Defendants pursuant to the provisions of Title 28 of the United States Code § 1441.

6.

This Notice of Removal is filed within 30 days of service of the Complaint pursuant to the requirements of 28 U.S.C. § 1446(b)(1).

7.

Complete diversity of citizenship exists between the parties to this action.

8.

Plaintiff Susan Solomon is a resident, domiciliary and citizen of the State of Georgia.

9.

Defendant Kim Annette Roberson is a resident, domiciliary and citizen of the State of South Carolina. Defendant Roberson resided at 804 Natchez Circle Mount Pleasant, South Carolina 29464 on or about March 2, 2020 and currently resides there. (See Exhibit “C,” Declaration of Kim Annette Roberson).

10.

Defendant Garrett A. Backman is a resident, domiciliary and citizen of the State of South Carolina. Defendant Backman resided at 804 Natchez Circle Mount Pleasant, South Carolina 29464 on or about March 2, 2020 and currently resides there. (See Exhibit “D,” Declaration of Garrett A. Backman).

11.

GEICO General Insurance Company has been served as a purported underinsured motorist insurance carrier only. It is not a joint tortfeasor with Defendants. Its only liability in this case will arise if and when Plaintiff meets her obligations under the Georgia Uninsured Motorist Statute, O.C.G.A. § 33-7-11. Under binding 11th Circuit precedent, the citizenship of an uninsured motorist insurance carrier should not be considered for purposes of determining diversity jurisdiction. *Broyles v. Bayless*, 878 F.2d 1400, 1402 (11th Cir. 1989)(“Because of the law’s unique treatment of insurance companies as parties in tort litigation and because [uninsured motorist carrier] Tennessee Farmers was not the primary defender of this lawsuit, we find that the district court should not have considered the company’s citizenship in determining diversity jurisdiction”)¹. Accordingly, removal in this case remains appropriate regardless of the citizenship of GEICO General Insurance Company.

12.

Pursuant to 28 U.S.C. § 1332, “district courts shall have original jurisdiction over all citizen actions where the matter in controversy exceeds the sum or value of

¹ This is a common sense approach. After all, if a UM carrier’s citizenship could destroy diversity, almost no cases arising out of auto accidents would be subject to removal, because the UM carrier is required to be licensed as an insurer in the Plaintiff’s state of residence, where most claims arise.

\$75,000.00, exclusive of interest and costs, and is between citizens of different states.” Here, Plaintiff and Defendants are citizens of different states and the amount in controversy is greater than \$75,000.00.

13.

“If removal of a civil action is sought on the basis of the jurisdiction conferred by section 1332(a) the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy.” 28 USCS § 1446 (c)(2).

14.

A removing defendant may demonstrate that the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. See 28 U.S.C. § 1446(c).

Notice to Parties and Notice of Filing Notice of Removal

15.

Defendants have given written notice of the filing of this Notice of Removal to the Plaintiff by notifying her attorney of record, Hector J. Rojas, Jr., Esq., Morgan & Morgan Atlanta, PLLC, Post Office Box 57007, Atlanta, GA 30343-1007. Defendants also filed a written notice with the Clerk of the State Court of Fulton County, copy of said notice being marked as “Exhibit E” and attached hereto.

16.

Counsel for GEICO General Insurance Company consents and joins in the removal of this matter to the Northern District of Georgia, Atlanta Division.

17.

Defendants have complied with all provisions of 28 U.S.C. § 1446 governing the procedure for removal. By virtue of 28 U.S.C. §1441, 28 U.S.C. §1332 and based upon the allegations in Plaintiff's Complaint, the United States District Court for the Northern District of Georgia, Atlanta Division, has original jurisdiction over this matter.

18.

Defendants reserve the right to amend or supplement this Notice of Removal or to present additional arguments in support of its entitlement to remove this case.

WHEREFORE, Defendants pray that this case be removed to the United States District Court for the Northern District of Georgia, Atlanta Division.

Respectfully submitted, this 14th day of August, 2020.

SWIFT, CURRIE, MCGHEE & HIERS, LLP

/s/ Anelise Codrington

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CERTIFICATE OF COMPLIANCE

Counsel hereby certifies that this document has been prepared with one of the font and point selections approved by the Court pursuant to L.R. 5.1(C) of the Northern District of Georgia, specifically, 14 point, Times New Roman font.

Respectfully submitted, this 14th day of August, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing ***DEFENDANTS KIM ANNETTE ROBERSON AND GARRETT A. BACKMAN NOTICE OF REMOVAL*** upon all parties to this matter via regular U.S. mail, to counsel of record as follows:

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Respectfully submitted, this 14th day of August, 2020.

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